



South Florida Water Management District

GOVERNING BOARD MEETING MINUTES

February 11, 2010

9:00 AM

District Headquarters - B-1 Auditorium

3301 Gun Club Road

West Palm Beach, FL 33406

Members Present:

Joe Collins

Michael Collins

Charles Dauray

Shannon Estenoz

Jerry Montgomery

Kevin Powers

Patrick Rooney

Members Absent:

Eric Buermann, Chair

1. **Call to Order** - Jerry Montgomery, Vice Chair, Governing Board

Vice Chair Montgomery called the meeting to order at 9:11 a.m.

2. **Pledge of Allegiance** - Jerry Montgomery, Vice Chair, Governing Board

Mr. Charles Dauray led the group in the Pledge of Allegiance.

3. **Recognition of Big Cypress Basin Board Members** - Charles Dauray, Chair, Big Cypress Basin Board

- John Sorey

- Liesa Priddy

- Pamela Mac'Kie

- Noah Standridge

- Fred Thomas

Mr. Charles Dauray recognized the Big Cypress Basin Board members Fred Thomas, John Sorey, Liesa Priddy, and Noah Standridge who were in attendance at the meeting.

4. Employee Recognition - Presented by Carol A. Wehle, Executive Director

- January Employee of the Month: Misha Ostrovsky
- January Team of the Month: The Environmental Resource Compliance Division Team
- February Employee of the Month: Jorge Jaramillo
- February Team of the Month: X-Web Redevelopment Team
- February Good Samaritan Award: Jeff Rand
- Employee of the Year: Paul Warner
- Team of the Year: Master Agreement Negotiation Team

Carol Wehle, Executive Director, recognized the January Employee and Team of the Month, the February Employee and Team of the Month, the February Good Samaritan Award, the 2009 Employee of the Year, and the 2009 Team of Year.

Ms. Wehle reported over \$33,0000 was raised for the Race for the Cure event and more than 420 staff and family members participated in the event.

Ms. Estenoz said she enjoyed participating in the event and is proud of the District Team.

Mr. Montgomery said this is one of the most important causes to be involved in and thanked staff for participating.

Ms. Wehle reported on the District's Haitian Relief fund and said more than \$4400 has been collected.

Mr. John Marshall thanked everyone for attending the Everglades Coalition Conference. He recognized Susan Sylvester who participated in the River of Grass canoe expedition sponsored by the Arthur R. Marshall Foundation.

5. Presentation of Award for the District's *The Leader Within* Program - Steve Feinstein, President of the Fort Lauderdale Chapter of the American Society of Training and Development

Janene Rizzo, American Society of Training and Development, Palm Beach County Chapter, presented an award to the District for best practices for the Leader Within Program.

6. Recognition of Governing Board Member Michael Collins - Jerry Montgomery, Vice Chair, Governing Board

Vice Chair Montgomery recognized Michael Collins for his 11-year tenure as a South Florida Water Management District Governing Board member. He read a letter from former Governor Jeb Bush recognizing Mr. Collins.

Mr. Powers thanked Mr. Collins for his dedication and passion for ecosystem restoration.

Mr. Rooney thanked Mr. Collins for bringing clarity and providing background information on District issues.

Mr. Dauray thanked Mr. Collins for his historical knowledge pertaining to District issues.

Chair Buermann called into the meeting and praised Mr. Collins for his tremendous service to the District and the people of Florida. He said Mr. Collins has been a strong advocate for saving the environment.

Mr. Joe Collins said Mr. Collins is the strongest advocate for Florida Bay and Everglades Restoration. He's an expert on land management and is a friend to the agricultural community.

Ms. Estenoz said she was happy to have worked with Mr. Collins and have shared a lot of history including the love for Florida Bay and the Florida Keys.

Ms. Wehle thanked Mr. Collins for his dedication to Florida Bay, the Everglades and the employees of the Agency. She thanked him for his service as a Board member.

A video was shown of Chairman Buermann, who was not in attendance at the meeting, wishing Mr. Collins all the best and thanking him for his service as Board member of the District.

A plaque and photo were presented to Mr. Michael Collins for his service as Governing Board member.

Mr. Michael Collins said it has been an honor and privilege to serve as a Board member to the South Florida Water Management District. He thanked staff for their dedicated work to the agency and South Florida's ecosystem.

7. Approval of Minutes

Approval of the Minutes for the January 13, 2010, Workshop meeting and the January 14, 2010, Regular Business meeting held in Key Biscayne, Florida

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 7

Vote called. Voting yes: Shannon Estenoz, Joe Collins, Michael Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

8. Agenda Addendum - Annette Carter, Director, Office of Governing Board & Executive Services

Annette Carter, Director, Office of Governing Board & Executive Services, read into the record:

Section 120.525, Florida Statutes, allows the District to change the published agenda for good cause shown, as determined by the presiding officer. Based upon that authority, the Chairman has determined that good cause exists to make certain changes to the Agenda. These changes are being made in order to permit the Governing Board to efficiently accomplish necessary public business at this meeting and to reflect the items on the agenda that have been requested or suggested to be deleted, revised, supplemented or postponed. These changes have been listed in the Governing Board Addendum available at the entrance to this meeting room.

9. Abstentions by Board Members from items on the Agenda

Jerry Montgomery abstained from Consent Agenda Item 19.

Ms. Estenoz provided a disclosure on Discussion Agenda Item 47. Her husband's law firm wrote a letter four years ago to Miami Dade County related to this piece of property. Her husband does not have a current client related to matters on this parcel but in the interest of full disclosure, she is reporting this information.

10. Audit & Finance Committee Report - Charles Dauray, Chair

Mr. Dauray provided the Audit and Finance Committee meeting report which was held on February 9, 2010 in West Palm Beach.

Mr. Dauray reported on the two reports that were provided to the Audit & Finance Committee and requested Board approval on:

- An audit of compliance on the Lake Okeechobee Protection Act, and
- A survey of participants in the Districts small business enterprise program.

Motion made by Shannon Estenoz, seconded by Kevin Powers to approve an audit of compliance with the Lake Okeechobee Protection Act, and a survey of participants in the Districts small business enterprise program. Vote called. Voting yes: Michael Collins, Charles Dauray, Kevin Powers, Patrick Rooney, Jerry Montgomery, Shannon Estenoz, Joe Collins. Motion passed.

11. Governing Board & Water Resources Advisory Commission (WRAC) Joint Workshop Report - Shannon Estenoz, WRAC Chair

Ms. Estenoz reported on the Governing Board & WRAC Joint Meeting which was held on February 9, 2010 at the Hilton in West Palm Beach.

This was the first joint meeting with the Governing Board and WRAC. There was excellent attendance and the agenda included presentations and discussion on three items: water quality standards, Climate Change and Sea Level Rise, Adaptive Protocols for the Lake Okeechobee Regulation Schedule 2008, and a brief update on Consumptive Use of Water 5-year Compliance Review Process.

Ms. Estenoz said there was a consensus on the Adaptive Protocols proposal and this information will be brought to the Board at a later date in order for the stakeholders to continue to work through the process.

Consent Agenda

12. Public Comment on Consent Agenda

Public Comment: Paul Gray, Audubon, thanked the Board for participating in the Joint meeting and supports the extension of the Adaptive Protocol process.

Public Comment: Rosa Durando, citizen, commented on Agenda Item 18, the mercury study. She stated mercury is a problem in South Florida.

13. Pull Items for Discussion from Consent Agenda

There were no items pulled for discussion.

14. Board Comment on Consent Agenda

Mr. Michael Collins commented on Consent Agenda Item 27 and recognized Jim Harvey and Freddy Fisikelli for their leadership on this pilot project.

Ms. Estenoz also congratulated Mr. Harvey and Mr. Fisikelli for their leadership on this pilot project.

Ms. Estenoz is also pleased to see that reclaimed pipes will be laid in the District's right of way in order to save money in urbanized areas.

Mr. Montgomery commented on Agenda Item 20 and the wonderful intergovernmental cooperation between the District and Miami Dade Solid Waste Authority.

Regulatory Matters

15. Denials

Consent Agreements

Conservation Easements and Releases

Water Shortage Variance Denials

Water Shortage Variances

Seminole Tribe Work Plans

Page 1 No 1 Jacaranda Lakes (WU Denial): **Postponed**

Page 2 No 3 Tonset Property (ERP Denial): **Postponed**

16. Right of Way Occupancy New Permits

Right of Way Occupancy Permit Modifications

Right of Way Occupancy Permit Requests with Waiver of District Criteria

Everglades Restoration and Capital Projects

17. **2010-200** A Resolution of the Governing Board of the South Florida Water Management District approving Staff Recommendations for releases of District canal, mineral and road reservations, releases of Trustees of the Internal Improvement Trust Fund (T.I.I.T.F.) canal reservations, and issuance of non-use commitments; providing an effective date. (Vinola Rada, ext. 6158)
18. **2010-201** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3-year contract with TetraTech EC, Inc., subject to successful negotiations, for the South Florida Wetlands Mercury Hot Spot Study, in the amount of \$366,000 of which dedicated funds (Everglades Restoration Trust Fund) in the amount of \$122,000 are budgeted; and the remainder is subject to Governing Board approval of the FY11-13 budgets; providing that, if negotiations are unsuccessful with TetraTech EC, Inc., the District will proceed with negotiations in ranked order until a contact has been successfully negotiated; providing an effective date. (Contract Number 4600002003) (Mark Gabriel, ext. 2820)
19. **2010-202** A Resolution of the Governing Board of the South Florida Water Management District to approve the acquisition of land interests containing 122.44 acres, more or less, for the Kissimmee Chain of Lakes Project, in Polk and Osceola Counties, in exchange for the conveyance of land interests containing a maximum of 10.83 acres, more or less, in Polk County; approve declaring surplus for exchange and conveyance land interests containing a maximum 10.83 acres, more or less, in Polk County, without reservation of interests under Section 270.11, Florida Statutes, together with any structures and improvements deemed unnecessary for the stated purpose of the original land acquisition; providing an effective date. (Bob Schaeffer, ext. 2985)
- Note: Mr. Jerry Montgomery abstained from voting on this agenda item.
20. **2010-203** A Resolution of the Governing Board of the South Florida Water Management District to approve declaring surplus land interests containing 0.95 acres, more or less, in fee, being the East one-half (E 1/2) of abandoned "Maine Street" located in Sections 8 and 9, Township 55 South, Range 39 East, Miami-Dade County, C-1W (Black Creek Canal) Project; authorize the donation of said property to Miami-Dade County for use as part of a county park; and approve waivers of the application fee and reservation of rights; providing an effective date. (Marcy Zehnder, ext. 6694)
21. **2010-204** A Resolution of the Governing Board of the South Florida Water Management District to authorize District staff to purchase land interests, containing 6.54 acres, more or less, in Okeechobee County and bid at a public auction, if necessary, for those land interests identified in the foreclosure lawsuit styled U.S. Bank, N.A., as Successor Trustee V. Margaret Froggatt, Michelle L. Harper, and Donnie Harper, Jr., a/k/a Donnie Harper, et al., Case Number 2009 CA 0029 filed in the Circuit Court of the 19th Judicial Circuit in and for Okeechobee County, for the expansion of the Okeechobee Field Station, for which ad valorem funds, Capital Projects Okeechobee, are budgeted; declaring surplus, disposal of, and removal from the asset records, any such structures and improvements deemed unnecessary for the stated purpose of the original land acquisition; providing an effective date. (Barbara Katz, ext. 6837)

22. **2010-205** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the Northern Everglades Specific Appropriation 1741 consumable budget needs for fiscal year 2009-2010, utilizing funds from the Save Our Everglades Trust Fund; and authorizing the Executive Director or her designee to request reimbursement based on actual expenditures through September 30, 2010; providing an effective date. (Temperince Morgan, ext. 4204)

23. **2010-206** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 10-year cooperative agreement with the Florida Department of Environmental Protection for the use of funds received from the Save Our Everglades Trust Fund for Northern Everglades and Estuaries Protection Program land acquisition, planning, design, engineering and construction efforts; providing an effective date. (Contract Number 4600001991) (Temperince Morgan, ext. 6987)

Executive Office

24. **2010-207** A Resolution of the Governing Board of the South Florida Water Management District amending the Fiscal Year 2009-2010 Budget; providing an effective date (Mike Smykowski, ext. 6295).
25. **2010-208** A Resolution of the Governing Board of the South Florida Water Management District authorizing the transfer of funds within the District FY2009-2010 budget as shown on the attachment hereto; providing an effective date (Mike Smykowski, ext. 6295).
26. **2010-209** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into an amendment to purchase order 4500043345 with A.L. Jackson and CO., P.A., as a Special Procurement using the State of Florida Contract 973-561-010-1, for an SAP Netweaver Lead in the amount of \$57,000 for which ad valorem funds are budgeted in FY10, providing an effective date. (Paul Dumars, ext. 6212, Purchase Order 4500043345)

Regulatory and Public Affairs

27. **2010-210** A Resolution of the Governing Board of the South Florida Water Management District authorizing the Executive Director or Designee to negotiate and execute the Memorandum of Agreement among the Town of Southwest Ranches, the South Broward Drainage District, the Department of Agriculture and Consumer Services and the South Florida Water Management District for the purpose of developing a pilot project to investigate revisions to water management system operations within the South Broward Drainage District's S9/S10 Basin. (Anthony Waterhouse, ext. 6867)

28. **2010-211** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a cost-share agreement with Treasure Coast Resource Conservation and Development Council for Canal 1 Erosion and Sedimentation Project for one (1) year, in the amount of \$465,118, for which state appropriations are budgeted for fiscal year 2010; providing an effective date. (Contract No. 4600002031) (Kathryn LaMartina, ext. 3603)
29. **2010-212** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a cost-share agreement with the City of Port St. Lucie for the E-8 Waterway Phase 3 Stormwater Quality Retrofit Project for one (1) year, in the amount of \$178,641, for which state appropriations are budgeted for fiscal year 2010; providing an effective date. (Contract No. 4600002030) (Kathryn LaMartina, ext. 3603)
30. **2010-213** A Resolution of the Governing Board of the South Florida Water Management District requesting a budget transfer from Everglades Restoration and Capital Projects, Coastal Program to Regulatory and Public Affairs, Lake Okeechobee program in the amount of \$1,107,910 and the release of funds from the Save our Everglades Trust Funds by the Department of Environmental Protection for the Highlands County acquisition of land interest containing 401.13 acres for the Istokpoga Marsh Watershed Improvement District/Highlands County project in Highlands County which was approved by the Governing Board in January 2010, in the amount of \$2,807,910, together with associated costs; pending contract for sale; providing an effective date. (Benita Whalen, ext 2957)

Corporate Resources

31. **2010-214** A Resolution of the Governing Board of the South Florida Water Management District to authorize an amendment to contract 4600000741 with Vitaver & Associates, Inc. for Information Technology hardware and software asset accounting & distribution services by exercising the option to extend the term of the contract by 2 years from April 1, 2010 to April 1, 2012, and to increase funding by \$400,000 of which ad valorem funds are subject to Governing Board approval of FY11 - FY12 budgets; providing an effective date. (Karl Steinmiller, ext. 2622)

Operations and Maintenance

32. **2010-215** A Resolution of the Governing Board of the South Florida Water Management District to recognize that the term of this cost-share agreement CN040435 / 3600000369 with the U.S. Corp of Engineers is indefinite and will remain in place until such time as the Phase 2 Manatee Protection Systems installation is complete and to further recognize that additional funding will be required for on-going Phase 2 Installation of Manatee Protection Systems in an amount not-to-exceed \$500,000 for which ad valorem funds from Operations & Maintenance Capital Projects savings are being utilized; providing an effective date. (Contract Number CN040435 / 3600000369) (Kathy Collins, ext. 2894)

33. **Board Vote on Consent Agenda**

Note: Vice Chair Montgomery abstained from voting on Agenda Item 19.

Motion made by Michael Collins, seconded by Shannon Estenoz to Approve the following item(s): 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

Vote called. Voting yes: Michael Collins, Shannon Estenoz, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

Workshop Agenda

34. State of Water Resources

A) Water Conditions & Water Supply Report - Susan Sylvester, Director, Operations Control & Hydro Management Department (ext. 6152)

B) Ecological Conditions Report - Garth Redfield, Chief Environmental Scientist, Restoration Science Department (ext. 6611)

Susan Sylvester, Director, Operations Control & Hydro Management Department, reviewed the recent rainfall and groundwater levels. She reported Lake Okeechobee's water stage is 13.54 feet.

Ms. Estenoz and Mr. Dauray requested a briefing on the Lake Okeechobee position analysis.

District staff proposes to continue recommending to the USACE potential releases up to 450 cfs to the Caloosahatchee Estuary, in the form of a pulse release, based upon:

- Demonstrated need of the ecosystem.

- Balancing water supply and flood protection.

- Lake stage is in the baseflow subband of LORS 2008.

Redirection of 200 cfs from St. Lucie to the Caloosahatchee by the USACE for a total of 650 cfs is acceptable at this time.

It is also anticipated that the Lake will be in the low subband by next week, which may require increases in release volumes.

Mr. M. Collins said he does not agree with increasing pulse releases, basing it on a weather report, and feels it is irresponsible.

Mr. Collins said if the District's recommendation is 450 cfs and the USACE is taking an additional 200, he feels the District's recommendation should be 250 cfs.

Ms. Wehle explained, based on the Regulation Schedule, if 450 cfs. of water is sent to the west coast, and 200 cfs is sent to the east coast, but the USACE sends it all west, the Agency will not oppose this.

There was further discussion on the pulse releases to the estuaries, the soil being saturated in the watersheds, and the public's health and safety if there is flooding issues in the future. The District's science staff still support pulse releases as it is in the best interest of the environment.

Mr. Joe Collins requested an explanation from the USACE if they are not going to follow the recommendations by the District.

Ms. Wehle reported staff will be meeting with USACE staff to discuss the adaptive protocol procedures.

Mr. Powers asked about the relationship to these pulse releases versus the level of Lake Okeechobee.

Ms. Wehle said it amounts to inches of water released from the Lake. She explained the importance of evaluating conditions, flow and trends.

Lt. Colonel Michael Kinard, USACE, said per the schedule and where we are now, the USACE does not have the authority to go above the 650 cfs. He said the USACE works cooperatively with District staff concerning releases that will be made within the schedule. He reported on the three meetings that take place which provide input on the environmental conditions.

Public Comment: Paul Gray, Audubon, explained the pulse releases and the amount of water level taken from Lake Okeechobee.

Public Comment: Pete Quasius, Collier/Audubon, praised Mike Collins and thanked him for a job well done as Governing Board member.

Public Comment: Rae Ann Wessel, Sanibel, Captiva Conservation Foundation, addressed the issues of the releases into the Caloosahatchee and said the 650 cfs is short of the tapegrass zone in the northern estuary. She requested looking at a 30 day schedule with 3 sets of pulses.

Garth Redfield, Chief Environmental Scientist, Restoration Science Department, focused on the Ecological conditions and reported on impacts to the wildlife due to the cold weather. Dr. Redfield said the water conditions are good in the Kissimmee Basin. Water clarity is satisfactory in Lake Okeechobee and there are large flocks of wading birds in the area. He also reported on the salinity levels for the Caloosahatchee and the St. Lucie Estuaries.

Public Comment: Pete Quasius, Collier Audubon, said the vital time is November for the Caloosahatchee and the importance of flow from the Basin to keep the seagrasses alive.

Peter Doering, Chief Environmental Scientist, responded to the question about a steady release versus pulse releases into the Caloosahatchee Estuary as a means of collecting data. He does not recommend doing a steady release at a low level because of fresh water floating on top of the salt water and no ventilation. This could cause an algae bloom. The energy in the peak flow pulse releases mixes the water column up. He also said by doing the pulse releases, it pushes the salt wedges back. He said the week-to-week decisions can work. It's a matter of not waiting too long between the pulse releases.

Everglades Restoration and Capital Projects

35. Sulfur Action Plan Update - Mark Gabriel, Lead Environmental Scientist, Restoration Sciences Department (ext. 2820)

This item has been deferred.

- 36. Aquifer Storage and Recovery Update** - Tom Teets, Director, Policy & Coordination Department (ext. 6993)

This item has been deferred.

- 37. Implementation Changes for Biological Control of Melaleuca and other Exotics** - Larry Gerry, Chief Scientist, Federal & State Policy Division (ext. 3701)

This item has been deferred.

Executive Office

- 38. Strategic Planning** - Mike Smykowski, Director, Budget Office, and Ernie Barnett, Director of Legislative Affairs, Regulatory and Public Affairs (ext. 6295 and 2110)
(Item will not be heard prior to 2:00 PM)

Ernie Barnett, Director, Legislative Affairs, presented information on Florida's fiscal outlook, unemployment rates, housing permit declines, manufacturing job losses, and the projected general revenue.

Mr. Barnett reported the national recession has ended, but Florida's economy is on a different path of recovery. Unemployment rates are higher, and the majority of counties with the highest unemployment rate are within the Districts boundaries. Mr. Barnett then reported on the Governor's proposed budget.

Mr. M. Collins said he doesn't believe the District should be basing their budget on projections which have had historic problems over the past years.

Mr. Montgomery said we have a lot of facts on what the future revenue projections will be by the lower tax base.

Mike Smykowski, Director, Budget Office, presented information on the District's Fiscal Foundation, and the District Budget Savings from FY08 - FY10.

Mr. Montgomery said he endorses the cuts regarding travel, training and conferences but said he doesn't think these are sustainable cuts when you look at the type of agency we are. He thinks that the budget should be built out in a pragmatic way in order to not put the burden on the staff. He requested a plan to reintroduce those elements given the right budget and timeframe.

Mr. Joe Collins commented on conferences and said this is the most important way information gets out to the regulated community. This type of networking is invaluable.

Mr. Montgomery also supports traveling to off-sight Board meetings.

Mr. Smykowski then reported on the operating efficiencies, the role of the Business Performance Management Office, and the recent actions on the outstanding District bonds, revenue update, national commercial real estate market, commercial construction for the 16 counties (District boundaries) and the economic concerns noted in 2009.

One of the major concerns was sea level rise:

- coastal structures and

- major retrofits to coastal structures cannot be absorbed within the \$60M O&M Capital appropriations.

Mr. Montgomery discussed a budget analysis for retrofitting structures working back from 2060 and building a plan that makes sense.

Mr. Smykowski then reported on the economic issues arising since 2009:

- Operating impacts of USACE Capital projects.
- Numeric Nutrient Criteria.
- Federal Cost Sharing (Master Agreement).

Ms. Wehle said staff is not recommending adding numbers in the long term strategic plan for numeric nutrient criteria because it is undefined at this point.

Mr. M. Collins said EPA will proceed on this course whether it is rational or not and it will impact the District financially within the next ten years.

There was further Board discussion on the cost estimates of constructing an STA to meet the numeric nutrient criteria.

Ms. Estenoz commented on the high costs of these water treatments, and the level of uncertainty with the numeric nutrient criteria.

Ms. Wehle explained that the issues where the District has specificity such as compliance with NPDES permits and increasing costs of O&M expenses. She explained that there will be enough of a challenge to deliberate on in March and wanted to provide a context of challenges ahead.

Mr. M. Collins then explained the discretionary budget has shrunk due to loss of revenue but there are still mandated and statutory responsibilities. He suggests responding to market conditions and not projections. He said the Board needs to be very cautious and conservative because the fixed costs are larger and the Board has less discretion now.

Mr. Montgomery commented on the elevated debt percentage and requested, since we are in a fundamentally different time, to do analysis based on the factors today and whether the Board should endorse that level of debt.

Public Comment: Drew Martin, Sierra Club, commented on the numeric nutrient criteria and the State controlling fertilizer and planting native plants to reduce the nutrients.

Regulatory and Public Affairs

39. Lake Okeechobee Service Area Permit Renewals Update - Jim Harmon, Director, Water Use Regulation Division (ext. 6777)

Jim Harmon, Director, Water Use Regulation Division, presented an update on the Lake Okeechobee Service Area (LOSA) irrigation basin renewal permits. He explained the Basin renewal period opened on 10/1/08 and closed on 2/28/09 and noted that applications for permits not issued after 2/28/10 may be subject to additional requirements.

Staff's recommendation:

- Continue to review and act upon pending applications.
- Continue outreach efforts to identify and permit users of "base condition" water.
- Create and implement a tracking database for restricted allocation areas.
- Update the Governing Board in six months.

Ms. Estenoz supports the "no farmer left behind" principle behind the LOSA rule. She received clarification from Mr. Harmon about the U.S. Sugar's Corp. permit renewal.

Mr. Joe Collins thanked staff and said they are doing a tremendous job reaching out to the public.

Public Comment: Paul Gray, Audubon, supports renewing these permits and the "no farmer left behind" principle.

Public Comment: Irene Kennedy Quincy, representing Agriculture Interests in Palm Beach and Hendry County, supports the board concept of "no farmer left behind" and commended staff on the extensive work that has been done for the permit renewal process.

Public Comment: RaeAnn Wessel, Sanibel/Captiva Conservation Foundation, commented that there is not a water budget for these permits. The District is issuing permits without knowing how much water is available.

Discussion Agenda

Everglades Restoration and Capital Projects

- 40. 2010-216** A Resolution of the Governing Board of the South Florida Water Management District authorizing a final purchase offer and eminent domain proceedings for the acquisition of certain land interests, consisting of 106.19 acres, more or less, in Osceola County, Florida, which are part of the Kissimmee River Restoration and Headwaters Revitalization Project for which ad valorem (Capital Projects Okeechobee) and dedicated (Florida Forever Trust Fund) funds are budgeted; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Michael Collins, seconded by Shannon Estenoz to Approve the following item(s): 40

Vote called. Voting yes: Michael Collins, Shannon Estenoz, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 41. 2010-217** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of land interests containing 106.19 acres for the Kissimmee River Restoration and Headwaters Revitalization Project, in Osceola County, and requesting the release of funds from the Florida Forever Trust Fund for acquisition of such land interests, together with statutory costs and associated costs; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Michael Collins, seconded by Shannon Estenoz to Approve the following item(s): 41

Vote called. Voting yes: Michael Collins, Shannon Estenoz, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 42. 2010-218** A Resolution of the Governing Board of the South Florida Water Management District authorizing a final purchase offer and eminent domain proceedings for the acquisition of certain land interests, consisting of 140.60 acres, more or less, in Osceola County, Florida, which are part of the Kissimmee River Restoration and Headwaters Revitalization Project for which ad valorem (Capital Projects Okeechobee) and dedicated (Florida Forever Trust Fund) funds are budgeted; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 42

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 43. 2010-219** A Resolution of the Governing Board of the South Florida Water Management District advising the Department of Environmental Protection of the proposed acquisition of land interests containing 140.60 acres for the Kissimmee River Restoration and Headwaters Revitalization Project, in Osceola County, and requesting the release of funds from the Florida Forever Trust Fund for acquisition of such land interests, together with statutory costs and associated costs; providing an effective date. (Tom Hanaway, ext. 6668)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 43

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 44. 2010-220** A Resolution of the Governing Board of the South Florida Water Management District to authorize establishing a prequalified pool of 10 construction contractors to provide the District with construction of an Environmental Services Laboratory Facility; providing an effective date. (RFQ 6000000311) David Struve, ext. 4521, and Alan Shirkey, ext 3702)

No presentation provided.

Motion made by Michael Collins, seconded by Joe Collins to Approve the following item(s): 44

Vote called. Voting yes: Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Not present: Shannon Estenoz. Motion passed.

45. **2010-221** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 425-day contract with Worth Contracting, Inc., the lowest responsive and responsible bidder, for construction of the Biscayne Bay Coastal Wetlands - Phase 1 Project's Deering Estate Flowway Component in an amount not to exceed \$4,192,895 of which dedicated funds (Save Our Everglades Trust Fund) in the amount of \$2,348,021 are budgeted and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002035) (Jeff Kivett, ext. 4018)

No presentation provided.

Public Comment: Joan Lawrence, U.S. Department of Interior, thanked the Board for moving forward with this project.

Public Comment: Beth Kibler, South Miami Dade/Palmetto Bay, said she supports this project moving forward and requested to move ahead with the timeline on Phase 2.

Public Comment: Kahlil Kettering, requested to push for the PIR and hopefully get it done for WRDA 2010.

Public Comment: Lara Reynolds, Tropical Audubon Society, supports this project moving forward and said there needs to be increased coordinated efforts among the PDTs.

Public Comment: Dr. Amy Roda, supports CERP for the fisheries and tourism.

Motion made by Michael Collins, seconded by Joe Collins to Approve the following item(s): 45

Vote called. Voting yes: Michael Collins, Joe Collins, Charles Dauray, Shannon Estenoz, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

Executive Office

46. Consideration of (1) Administrative Law Judge P. Michael Ruffs Recommended Order, and (2) timely filed Exceptions to the Recommended Order and Responses thereto, if any, in DOAH Case No. 09-4996BID, Close Construction, Inc. v. South Florida Water Management District and Worth Contracting, Inc., regarding the District's decision to award a contract for the refurbishment and automation of District structures G-123 and S-34 to Worth Contracting, Inc. (Sheryl G. Wood, General Counsel, ext. 6976; Josef Fiala, for SFWMD Staff, ext. 6044; Andrew Baumann, Esq. for Petitioner, Close Construction, Inc.; and Robert Frye, Esq. for Intervenor, Worth Contracting, Inc.) **(Time certain - 1:00 PM)**

Sheryl Wood, General Counsel, explained the procedural history and background, and ALJ's key findings in this case:

- Close Construction's use of original bid form rather than revised form attached to Addendum Two was a non-material irregularity;
- Error in bid did not confer competitive advantage to Close Construction, affect price of bid or deprive District of assurances that contract would be executed and performed in strict accordance with all contract documents, including addenda;
- District failed to follow its policies by not affording Close Construction an opportunity to correct its non-judgmental mistake after bid opening;
- District failed to apply applicable interpretative presumptions of RFB;
- Close Construction's bid was responsive to RFB;
- District's determination that Close Construction's bid was nonresponsive was arbitrary, clearly erroneous and contrary to competition.

Josef Fiala, Associate Attorney, Office of Counsel, presented an oral argument pertaining to the exceptions to Administrative Law Judge's (ALJ) recommended order. This is a bid for modification to a pump station and water control structure in Broward County. Mr. Fiala reported Addendum 2 required all bidders to replace all the original bid forms with a new and revised bid form.

Staff's recommendation:

- Overturn the recommended order.
- Uphold District's bid award to Worth Contracting, Inc.

Andrew Baumann, representing the petitioner, Close Construction, Inc., appeared. He stated the judge weighted the evidence and made the key findings that the bid, despite being submitted on the original bid form, was a minor mistake and did not give Close Construction a competitive advantage.

Mr. Fiala presented his rebuttal and stated ALJ's finding of facts states this is a minor mistake by not submitting the corrected bid form as stated in Addendum 2. District staff believe this is a material deviation.

There was Board discussion on the form submitted to the District, Close Construction complying with Addendum 2, and whether the form submitted was a minor or material deviation, and the District's policy and procedures manual.

Ms. Wood explained that the Board should have confidence in the procurement staff and what they were doing in their mind was the correct thing to do. She said what we have here is a matter that has gone in front of an Administrative Law Judge (ALJ), that testimony has been given, evidence has been weighed by the ALJ, and he has found findings of facts and conclusions of law.

Ms. Wood provided General Counsel's recommendation:

As set forth in the confidential memorandum from the General Counsel to the Governing Board:

- Reject District Staff's and Intervenor's Exceptions to Recommended Order;
- Adopt the preliminary matters addressed on pages 1 through 6 of the ALJs Recommended Order except the correction to the list of exhibits admitted into evidence;
- Adopt all of the Findings of Fact contained in the ALJs Recommended Order;
- Adopt all of the Conclusions of Law contained in the ALJs Recommended Order, except for that portion of Conclusion of Law No. 49 wherein the ALJ determined Close Construction to be a responsible bidder;
- Modify the ALJs Recommendation to order that Close Construction be found responsive as to the issues of submission of the original bid form and direct District staff to resume the processing of the bids for responsibility in order to determine the appropriate award of the contract.

There was Board discussion on material and non-material deviation, the addendum, the procurement manual and eliminating staff discretion, and setting precedence for other contracts. Mr. M. Collins said he would not support this.

Ms. Wood stated, based upon the record itself, if the Board decides not to take the General Counsel's recommendation to deem them responsive, then the Board should reject all bids and start over again.

Mr. George Horne, Deputy Executive Director, Operation & Maintenance, reported that it would be approximately a 4-month delay if the contract was rebid.

Ms. Estenoz said she relies on the District procurement process and she said she will not be able to support this.

Ms. Wood clarified to the Board that they are basing their decision upon the facts in the record that were weighed by the ALJ. These facts and circumstances apply only to this specific case. It is not precedent unless we have these specific sets of circumstances again.

There was a motion by Joe Collins, seconded by Shannon Estenoz to reject all the bids and re-bid.

The motion was rescinded as there was a waiver of time granted for an extension of time by Andrew Baumann, Esq., representing the Petitioner, Close Construction, Inc. The Board will further discuss at the next meeting and issue it's final order then.

47. **2010-222** A Resolution of the Governing Board of the South Florida Water Management District authorizing a settlement and authorizing the Executive Director to execute a Stipulation for Settlement and Final Judgment in furtherance of same in connection with an inverse condemnation action involving lands within the Biscayne Coastal Wetlands Project, styled Cutler Properties, LC v. South Florida Water Management District, filed in the 11th Judicial Circuit Court in and for Miami-Dade County, Florida, Case No. 08-46701 CA 5; providing an effective date. (Michael Compagno, ext. 6842) **(Item will not be heard prior to 2:00 PM)**

A waiver was granted and this item will be continued at the March Governing Board meeting.

Regulatory and Public Affairs

48. Deny Environmental Resource Permit Application 050406-1 for conceptual approval of a surface water management system to serve a 138.36 acre residential development known as Cutler Properties (Miami-Dade County) (Robert Brown, ext. 6283) **(Item will not be heard prior to 2:00 PM)**

A waiver was granted and this item will be continued at the March Governing Board meeting.

Corporate Resources

49. **2010-223** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Universal System Technologies, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002017. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 49

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

50. **2010-224** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Kyra Infotech, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002007. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 50

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 51. 2010-225** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Matrix Information Systems, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002020. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 51

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 52. 2010-226** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Naztec International Group, LLC, one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002013. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 52

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 53. 2010-227** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Nu Info Systems Technologies, Inc. d/b/a Compunnel Southeast, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002019. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 53

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 54. 2010-228** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Radise International, L.C., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002022. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 54

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 55. 2010-229** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Signature Consultants, LLC, one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002012. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 55

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 56. 2010-230** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with System Soft Technologies, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002014. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 56

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 57. 2010-231** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with TRG, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002018. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 57

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 58. 2010-232** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Indra USA, one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002011. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 58

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 59. 2010-233** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with the Ashvins Group, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002015. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 59

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 60. 2010-234** A Resolution of the Governing Board of the South Florida Water Management District to authorize the official ranking of short-listed firms and entering into a 3 year contract, with 2 one-year renewal options, subject to successful negotiations with Amzur Technologies, Inc., one of twelve firms selected for Information Technology services - staff augmentation, in an amount not-to-exceed total funding of \$30,000,000 for all twelve contracts, of which \$3,750,000 FY10 ad valorem funds and dedicated funds (Comprehensive Everglades Restoration Plan Fund and STA O&M Fund) are budgeted and the remainder is subject to Governing Board approval of the FY11 - FY13 budgets; providing an effective date. Contract number 4600002016. (Susan Curcio, ext. 6277)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 60

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

Operations and Maintenance

- 61. 2010-235** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 395 day contract with The Murphy Construction Company, the lowest responsive and responsible bidder, for the S-124 Culvert Replacement & Automation in the amount of \$2,257,350. for which ad valorem funds of \$1,200,000. are budgeted; and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002033) (Alex Garcia, ext. 3724)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Michael Collins to Approve the following item(s): 61

Vote called. Voting yes: Shannon Estenoz, Michael Collins, Joe Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 62. 2010-236** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 180 day contract with ZFI Engineering & Construction Incorporated, the lowest responsive and responsible bidder, for the S-72 Concrete Repairs in the amount of \$1,101,454 for which ad valorem funds are budgeted; providing an effective date. (Contract Number 4600002043) (Alex Garcia, ext. 3724)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 62

Vote called. Voting yes: Shannon Estenoz, Joe Collins, Michael Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 63. 2010-237** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 274 day contract with Overland Construction Company Incorporated, the lowest responsive and responsible bidder, for the S-135, G-36 and S-131 Boat Lock Hoist Replacement in the amount of \$1,667,900 for which ad valorem funds of \$1,400,000 are budgeted and the remainder is subject to Governing Board approval of the FY11 budget; providing an effective date. (Contract Number 4600002042) (Robin Deaton, ext. 4062)

No presentatiao provided.

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 63

Vote called. Voting yes: Shannon Estenoz, Joe Collins, Michael Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

- 64. 2010-238** A Resolution of the Governing Board of the South Florida Water Management District to authorize entering into a 760 day contract with Intercounty Engineering Incorporated, the lowest responsive and responsible bidder, for the S-140 Pump Station Refurbishment in the amount of \$4,450,000 for which ad valorem funds of \$500,000 are budgeted and the remainder is subject to Governing Board approval of the FY11-FY12 budgets; providing an effective date. (Contract Number 4600002041) (Sara Sciotto, ext. 4077)

No presentation provided.

Motion made by Shannon Estenoz, seconded by Joe Collins to Approve the following item(s): 64

Vote called. Voting yes: Shannon Estenoz, Joe Collins, Michael Collins, Charles Dauray, Jerry Montgomery, Kevin Powers, Patrick Rooney. Motion passed.

65. Public Comment

- Regulatory Policy Issues

- General Public Comment

Public Comment: Lara Reynolds, Tropical Audubon, opposes development of the Aerojet facility.

Public Comment: Kahlil Kettering, NPCA, opposes development of the Aerojet facility.

Public Hearing

Everglades Restoration and Capital Projects

66. Open Public Hearing

Adopt amendments to Rules 40E-2.091 and 40E-20.091, 40E-10.021, 40E-10.031, 40E-10.041, F.A.C., new Section 3.11.2 North Fork of the St. Lucie River, of the Basis of Review for Water Use Permit Applications within the South Florida Water Management District, incorporated by reference, and new Rule 40E-10.051, F.A.C., Water Reservation Areas: Upper East Coast Planning Area, to identify the quantity, location and timing of waters reserved from allocation for the protection of fish and wildlife in the North Fork of the St. Lucie River in support of the Comprehensive Everglades Restoration Plan for the Indian River Lagoon-South Project. (Brenda Mills, ext. 6536)

Close Public Hearing

Vice Chair Montgomery opened the Public Hearing.

Brenda Mills, Lead Planner, Everglades Restoration and Capital Projects, presented information on the adoption of this reservation rule.

Public Comment: Kim Taplin, USACE, commented on the importance of this action.

Vice Chair Montgomery closed the Public Hearing.

Motion made by Kevin Powers, seconded by Shannon Estenoz to Approve the following item(s): 66

Vote called. Voting yes: Kevin Powers, Shannon Estenoz, Joe Collins, Michael Collins, Charles Dauray, Jerry Montgomery, Patrick Rooney. Motion passed.

Staff Reports

67. General Counsel Report - Sheryl Wood

Ms. Wood reported on the Bond validation case, and stated the oral argument is scheduled on April 7, 2010 at 9:00 a.m.

Ms. Wood also reported on the RLI vs. SFWMD case in Osceola County.

68. Executive Director's Report - Carol Wehle

- Report on Permits Issued by Authority Delegated to Executive Director from January 1 to January 31, 2010

Ms. Wehle reported copies of the permits issued from January 1 through January 31, 2010 were included in the Board reports.

69. Board Comment

Vice Chair Montgomery recognized Frank Hayden, Procurement Director, who is leaving the District. He wished him well and thanked him for his service with the agency.

Attorney Client Sessions

Executive Office

- 70.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno.

ATTENDEES: Governing Board Members E. Buermann, J. Collins, M. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, P. Rooney; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, K. Burns, J. Nutt. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and / or settlement negotiations in United States of America v. South Florida Water Management District, et al., United States District Court, Southern District of Florida, Case No. 88-1886-CIV-Moreno. (Sheryl G. Wood, ext. 6976)

Vice Chair Montgomery adjourned to Attorney Client Session at 3:50 p.m. He announced the meeting would reconvene in approximately 90 minutes.

Vice Chair reconvened the meeting at 5:50 p.m.

Sheryl Wood, General Counsel, reported there are no recommendations for the Board at this time for Agenda Item 70.

- 75.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in Cutler Properties, LC v. South Florida Water Management District, Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 08-46701 CA 5.

ATTENDEES: Governing Board Members E. Buermann, J. Collins, M. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, P. Rooney; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, M. Compagno, J. Nutt, B. Lewis, S. Martin. (Sheryl G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009), to discuss strategy related to litigation expenditures and/or settlement negotiations in Cutler Properties, LC v. South Florida Water Management District, Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. 08-46701 CA 5. (Sheryl G. Wood, ext. 6976)

Sheryl Wood, General Counsel, announced there is an offer on the table from the Cutler Properties' owners and it is conditional upon reaching acceptable terms and conditions in the settlement agreement which will be brought back to the Governing Board next month.

Motion made by Charles Dauray, seconded by Shannon Estenoz, agreeing to the amount of \$24.5M for the offer. Vote called. Voting yes: Michael Collins, Kevin Powers, Patrick Rooney, Jerry Montgomery, Shannon Estenoz and Joe Collins. Motion passed.

Howard Nelson, representing Cutler Properties, LC., announced they will waive the permit clock until the day after the next Governing Board meeting.

- 77.** Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in B & E Ranch & Grove, LC. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-19; Chandler, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-110; and Estate of Marvin Thomas, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-20.

ATTENDEES: Governing Board Members E. Buermann, J. Collins, M. Collins, C. Dauray, S. Estenoz, R. Montgomery, K. Powers, P. Rooney; Executive Director C. Wehle; District attorneys S. Wood, S. Nall, C. Kowalsky, K. Rizzardi, J. Nutt, K. Williams. (Sheryl. G. Wood, ext. 6976)

Action Items (if any) Stemming from Attorney Client Session

Attorney client session pursuant to Section 286.011(8), Florida Statutes (2009) to discuss strategy related to litigation expenditures and/or settlement negotiations in B & E Ranch & Grove, LC. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-19; Chandler, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-110; and Estate of Marvin Thomas, et al. v. South Florida Water Management District, Nineteenth Judicial Circuit, Okeechobee County, Case No. 2007-CA-20. (Sheryl. G. Wood, ext. 6976)

Sheryl Wood, General Counsel, reported there are no recommendations for the Board at this time for Agenda Item 77.

Adjournment

78. Adjourn

Vice Chair Montgomery adjourned the meeting at 6:00 p.m.

Eric Buermann
Governing Board Chairman
South Florida Water Management District Governing Board

Recorded By:

Cathy Widness
Administrative Assistant Senior
Governing Board and Executive Services
SFWMD